

# **Mao Declaration**

## **Exhibit 90**

**Davis Deposition Transcript**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, WILLIAM BYALL,  
JEREMY DAVIS, CHRISTOPHER  
CASTILLO, and MONIQUE  
TRUJILLO individually and on  
behalf of all other similarly No.  
situated, 5:20-cv-03664-LHK-SVK

Plaintiff,

vs.

GOOGLE LLC,

Defendant.

\_\_\_\_\_/

VIDEO-RECORDED DEPOSITION OF JEREMY DAVIS  
REMOTE ZOOM PROCEEDING  
Little Rock, Arkansas  
Friday, January 7, 2022

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

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Job No. 5019103

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Video-recorded deposition of JEREMY DAVIS, taken  
on behalf of the Defendant, Remote Zoom Proceeding from  
Little Rock, Arkansas, beginning at 10:06 A.M. Central  
Standard Time and ending at 4:29 P.M. Central Standard  
Time, on Friday, January 7, 2022, before Leslie Rockwood  
Rosas, RPR, CSR No. 3462.

1 hopefully the video where I'm waving right now  
2 demonstrates it's a live feed.

3 Q. It's looking pretty good.

4 Where are you, by the way? Are you in a law  
5 office right now? 10:11:26

6 A. We are. We're in a law office in Little Rock,  
7 Arkansas.

8 Q. Okay. On your -- so obviously I'm asking you  
9 these questions and you're answering them through a  
10 computer. On your computer screen, do you have any 10:11:38  
11 communication applications open? Like, texts, chats,  
12 emails?

13 A. No, sir. The only communication application  
14 that's open is the Zoom video right now. And I also have  
15 the -- is it the Veritext marked deposition website? 10:11:55

16 Q. Okay. What about your phone? Is your -- is  
17 your cell phone nearby?

18 A. It's sitting to the left, screen down, and I'm  
19 using it as the hotspot for this connection. But I can't  
20 see the screen. 10:12:11

21 Q. Okay. Mr. Davis, in general terms, what did you  
22 do to prepare for this deposition?

23 MR. LEE: And let me just advise Mr. Davis that  
24 you can answer Mr. Schapiro, but do not answer to the  
25 extent that it would reveal any communications you had 10:12:34

1 with any of your attorneys.

2 THE WITNESS: Understood.

3 Yeah, to answer the question, there was an  
4 understanding of what the case is all about, right,  
5 understanding the claims against Google in this case, and 10:12:51  
6 also review of material to prepare for this deposition.

7 Q. BY MR. SCHAPIRO: And when you say understanding  
8 what -- what the case is about, what do you mean? What  
9 did you do to come to an understanding of what the case  
10 is about? 10:13:12

11 MR. LEE: And, again, to the extent that your  
12 answer -- well, you can answer the question to the extent  
13 it doesn't reveal any communications you had with your  
14 attorneys. You can -- excuse me. You can say you met  
15 with your attorneys, but don't reveal any communications. 10:13:27  
16 Okay?

17 Q. BY MR. SCHAPIRO: Yeah, and let me just -- let  
18 me just echo that. Obviously you should follow whatever  
19 the instructions are of your attorney.

20 I'm not interested in the content of your 10:13:36  
21 communications, but -- but you -- you -- to the extent  
22 that you met with attorneys, et cetera, that is  
23 ordinarily not considered privilege, just the fact you  
24 met with them.

25 A. Understood. Yes, I did meet with the attorneys 10:13:51

1 on this case. And in particular, in understanding the  
2 case, it's mainly the current claims that are claimed  
3 against Google, which I have all the -- I believe the  
4 Complaints here next to me, which I've reviewed.

5 Q. And did you review those Complaints as well 10:14:11  
6 before they were filed?

7 A. Yeah, I believe that's correct. I had to review  
8 those and make sure that the Complaints were -- I believe  
9 that I was understanding and that I made sure that I was  
10 consulted by my attorneys before they were filed. I 10:14:35  
11 believe that's right.

12 Q. And was there anything in the -- in the  
13 Complaints -- when I refer to the Complaints now, I guess  
14 I'll refer to the -- the current operative Complaint,  
15 which I think is the Second Amended Complaint. 10:14:51

16 So you went over that. Is there anything in the  
17 Second Amended Complaint that you think is -- is  
18 inaccurate or incorrect?

19 A. No.

20 Q. All right. With regard to preparation for this 10:15:05  
21 deposition, I think you said a little earlier that you  
22 also went over some documents with your attorneys.  
23 Without telling me the contents, necessarily, of the  
24 documents, can you tell me what types of documents? Were  
25 these -- were these emails? Privacy policies? Websites? 10:15:27

1 photograph from when you were in a thrash band or  
2 something.

3 All right. Well, good. I think we have your  
4 educational and work history from the testimony here.

5 A. Just for the record, yeah, that is not me. 10:21:37

6 Q. All right. Jeremy Davis is probably not the --  
7 there are probably several Jeremy Davises out there in  
8 every state.

9 Mr. Davis, how -- how did you get involved in  
10 this case? Without revealing any conversations you had 10:21:52  
11 with counsel. But how did you get involved in this case?

12 A. Understood. I believe I saw a headline that  
13 there was going to be a class action against Google in  
14 the case of incognito specifically. And I saw that, and  
15 I responded to the fact that they were soliciting for 10:22:14  
16 lead plaintiffs. And that's how I got engaged.

17 Q. Do you recall where you saw that, what you  
18 described as a headline?

19 A. I do not specifically. I recall it was a news  
20 article on one of the newsfeeds from, like, either a news 10:22:29  
21 aggregator app or when I was on Google or another search  
22 engine, like Bing, where I was searching through news,  
23 and I think it cropped up there.

24 It just caught my eye on one of the news  
25 applications or sites that I was visiting. I don't have 10:22:47

1 specific recollection of which one.

2 Q. And what about your experience -- prior to  
3 seeing that headline or that article, what about your  
4 experience led you to be interested in -- in a lawsuit  
5 about incognito? 10:23:08

6 A. Yeah, I understand the question. I -- I think  
7 most rational people are always interested in the  
8 protection of our rights. And in this case, privacy.

9 And I had used incognito for a long time, and so  
10 it caught my eye. And it was something that piqued my 10:23:31  
11 interest, and I got engaged to learn more.

12 Q. And do you recall which law firm you first spoke  
13 with when you -- when you responded to the story that you  
14 saw?

15 MR. LEE: You can answer. 10:23:54

16 THE WITNESS: This -- I can answer, but it's  
17 embarrassing because I actually don't recall the specific  
18 law firm. It was definitely current counsel. I know  
19 there's multiple law firms involved, but I don't  
20 specifically recall which one. 10:24:09

21 Q. BY MR. SCHAPIRO: Do you remember which person?

22 A. Again, to the best of my recollection, it may  
23 have been either Ryan or Rosy, maybe, first. I can't  
24 recall.

25 Q. Outside of the contact that you made after 10:24:32



1 seeing the article or the story, did you have any  
2 preexisting relationship with any of the lawyers or law  
3 firms who are currently representing plaintiffs in this  
4 case?

5 A. No, sir. No prior engagement. These are all 10:24:47  
6 new contacts for me.

7 Q. And have you ever been involved in any other  
8 class action before as a named plaintiff?

9 A. No, sir.

10 Q. All right. Let's introduce another exhibit. I 10:25:13  
11 think you mentioned earlier what you referred to as the  
12 splash screen. Do you recall that testimony a second  
13 ago?

14 A. Yes, I do.

15 Q. All right. Let's introduce an exhibit, and I'll 10:25:37  
16 ask if this is what you were referring to. It should be  
17 Exhibit 2.

18 (Exhibit 2, Splash screen, marked for  
19 identification electronically by counsel.)

20 THE WITNESS: Just pulling that up now. 10:25:52

21 Q. BY MR. SCHAPIRO: Sure. And if your Exhibit  
22 Share is like mine, it may be giant when you pull it up.  
23 There's a little navigation bar at the bottom that allows  
24 you to zoom in or zoom out, if you want.

25 A. Yes, I see that now. 10:26:06

1 Yes, I would say this is familiar to me as that  
2 splash screen or that incognito new tab screen, however  
3 we're referring to it.

4 Q. And is this something that -- a screen that you  
5 see whenever you open a new tab in incognito mode? 10:26:27

6 A. Yes, that's correct.

7 Q. And so I want to ask you about some of the  
8 statements here.

9 Do you have any understanding, just in terms of  
10 plain English, of what the word "incognito" means? 10:27:02

11 A. Sure. As I understand it -- I haven't gone and  
12 referenced the dictionary or anything, but as I -- I  
13 think in general, you know, parlance and understanding,  
14 people understand incognito to mean concealed, anonymous,  
15 unidentifiable. 10:27:27

16 Q. And how about this first sentence here, "Now you  
17 can browse privately, and other people who use this  
18 device won't see your activity."

19 What is your understanding of that sentence?

20 A. Sure. When I read the words, "Now you can 10:27:55  
21 browse privately," comma, "and other people who use this  
22 device won't see your activity," that first sentence, I  
23 understand that to be two statements.

24 I'm being told now by Google in incognito mode  
25 in Chrome, that I can browse privately and other people 10:28:18

1 who use this device won't see my activity.

2 That's how I interpret that sentence.

3 Q. And is that how you've always interpreted that  
4 sentence?

5 A. Yes. 10:28:37

6 Q. And I noticed when you read it out loud, you --  
7 you said the word "comma." So is the comma important to  
8 your understanding of that sentence?

9 A. Yes. So -- so in English grammar, comma denotes  
10 separation of idea. And so -- at least that's how I 10:29:01  
11 understand it.

12 So I understand, like I said, if it was "and,"  
13 then that conjuncts or brings those things together as a  
14 single statement. But the comma, I believe, makes those  
15 separate statements. 10:29:17

16 So I can browse -- I can browse privately, and  
17 people who use this device won't see my activity.

18 Q. So if the comma were not in that sentence, in  
19 what way would your understanding of the sentence be  
20 different? 10:29:34

21 MR. LEE: Objection to form.

22 THE WITNESS: I would still understand the  
23 assertion of browsing privately, and then I would also  
24 still understand that if I use incognito mode, that  
25 people won't be able to see my activity on that device. 10:29:49

1 Q. BY MR. SCHAPIRO: So you would understand it the  
2 same without the comma?

3 A. Overall, I would say yes.

4 Q. And what do you understand browse privately to  
5 mean? 10:30:08

6 A. Sure. Browsing privately denotes, obviously,  
7 privacy from peering eyes. Like even the -- the icon at  
8 the top of the page gives you some indication of  
9 anonymity; right? And unidentifiability; right?

10 So I can also read the rest of the words that 10:30:39  
11 are on the screen with regard to what Google or Chrome  
12 won't say or collect, which is browsing history, cookies  
13 and side data and information entered in forms.

14 So I understand that the activity that I'm  
15 engaging in inside that browser session, because I've 10:31:02  
16 explicitly gone into incognito mode to be private, as the  
17 words on the screen say.

18 Q. So I asked you a little about -- about  
19 privately. How about the second part of that sentence?  
20 Is it -- are you contending in -- in this lawsuit that 10:31:18  
21 the second part of that sentence -- well, strike that.

22 It's fair to say, right, that one of the reasons  
23 you're here is because you believe that when you were in  
24 incognito, you -- you weren't actually browsing  
25 privately, at least as you understood or expected it; 10:31:45

1 correct?

2 A. That's -- that's correct. I understand from the  
3 Google Terms of Service, which relay me to the Google  
4 Privacy Policy, which I reviewed, that those words in the  
5 private policy, that I will be in control of my 10:32:07  
6 information and that I can browse privately using Chrome  
7 in incognito mode. And that would cover across Google's  
8 services.

9 And so it's my understanding that without my  
10 consent, Google actually did collect that information, 10:32:21  
11 even though the materials say that they won't when I'm in  
12 incognito mode.

13 Q. Let me ask you about the second part of that  
14 sentence. You're not contending that in incognito mode  
15 other people who used your device were able to see your 10:32:47  
16 activity, are you?

17 A. No, that part is clear to me.

18 Q. And you're not contending that that did not  
19 occur; correct?

20 MR. LEE: Objection to form. 10:33:05

21 MR. SCHAPIRO: Yeah, it's a double negative.  
22 Let me rephrase the question.

23 Q. You were contending that Google did various  
24 things that -- that you say were -- were not what Google  
25 said it was going to do. But that doesn't apply to the 10:33:19

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1 entity in this situation.

2 So I just want to make sure I understand your  
3 question. But when I read "Chrome" there, obviously  
4 they're referring to the browser. But I also understand  
5 that to include the back-end infrastructure of Google. 10:38:18  
6 Because they control the experience of the user when  
7 they're in Chrome.

8 And what's happening with what data is saved and  
9 relayed and the -- I think it's clear to say that the  
10 code that Google wrote is Chrome. And Chrome does 10:38:36  
11 what -- the code that Google wrote -- it executes those  
12 instructions.

13 Q. You said -- a moment ago you said, "I would say  
14 Chrome would be" -- I might not have the transcript  
15 right, but I think you said the thing that relays back to 10:39:01  
16 Google any browsing history. What do you mean by that?

17 A. I mean that in the claim, that's the assertion;  
18 right? That when you're in -- yeah, sorry. Go ahead.

19 Q. No, no. Finish your answer, please.

20 MR. LEE: Actually, actually, you should finish 10:39:20  
21 your answer, and then he can follow up.

22 THE WITNESS: Okay.

23 Q. BY MR. SCHAPIRO: Yeah.

24 A. So my answer was complete, yes.

25 Q. Okay. So are you saying that when Chrome relays 10:39:32

1 information to Google, that is the same thing as Chrome  
2 saving -- that is the same thing as the browser -- the  
3 Chrome browser saving information?

4 A. I mean, I -- I'm not an engineer working on the  
5 Google -- sorry, the Chrome browser. So the distinction 10:40:00  
6 of save in that operation or if it is relayed from a  
7 memory, what I'm saying is it is possible -- it is  
8 possible, and the claim is that despite whether or not  
9 Chrome saves it, that that information was collected by  
10 Google without consent. That's what I'm saying. 10:40:23

11 Q. I'm going to ask the same question about this  
12 next bullet point, "Cookies and site data."

13 Do you believe that Chrome, the browser, has  
14 saved cookies and site data from when you were using  
15 incognito mode? 10:40:48

16 A. I believe that when they -- excuse me just one  
17 second.

18 I believe that when Google states something on  
19 their page that they're stating what the behavior will  
20 be. But I -- I want to make sure that we don't conflate 10:41:06  
21 the claim that just because -- let's just assume that  
22 Chrome does what it says on the screen and cookies and  
23 site data are not saved.

24 To me, I don't read that as an exclusion of the  
25 claim that those cookie and site data might not also be 10:41:28

1 you close out of an incognito browsing session?

2 A. In general, what I understand is that they would  
3 be crushed or deleted. But I haven't inspected or  
4 verified to see if that happens in 100 percent of the  
5 cases -- or 100 percent of the time. But that's my 10:45:14  
6 general understanding.

7 Q. Now, Mr. Davis, I understand from some of the  
8 submissions in this case that you do most of your web  
9 browsing in incognito mode; is that correct?

10 A. Yeah, that is true. I found it convenient, 10:45:41  
11 generally, for that to be my default. And so, yes, that  
12 is true.

13 Q. And can you give me just a rough sense of the --  
14 of the percentage? Do you do, you know, 51 percent of  
15 your browsing in incognito mode? 99 percent? Something 10:46:11  
16 in between?

17 A. Yeah, I would say it's probably in the low- to  
18 mid-90 range. And then there are certain times in which  
19 I have to authenticate or want to have a non-incognito  
20 mode, or I may accidentally on a new device haven't 10:46:30  
21 configured that option out. I'm sure I've launched  
22 incognito tabs.

23 But, I mean, it's fair to say the majority of my  
24 browsing -- strong majority of my browsing is in  
25 incognito when I use Chrome, yeah. 10:46:51



1 going to use the CoinMarketCap website?

2 MR. LEE: Objection to form.

3 THE WITNESS: Well, the fact that I've already  
4 used CoinMarketCap, if that information has already been  
5 shared, then I suppose there's -- I suppose I would 11:34:04  
6 continue to use that site because it provides utility to  
7 me regardless of the existence or nonexistence of this  
8 Analytics browser add-on.

9 Q. BY MR. SCHAPIRO: Are there -- are there  
10 websites that you visit that don't provide utility to 11:34:41  
11 you?

12 A. As a general rule, no. I generally don't waste  
13 my time visiting sites for no reason.

14 Q. All right. I think you told us earlier -- I  
15 think you told us earlier that you have -- that you 11:35:01  
16 reviewed the Complaint and the Amended Complaints in this  
17 case; is that correct?

18 A. That's correct.

19 Q. So one phrase -- I can load it, if you or your  
20 lawyer would like me to, but you might know it by heart 11:35:27  
21 because it's the first paragraph of the Complaint.

22 It says, "This lawsuit concerns Google's  
23 surreptitious interception and collection of personal and  
24 sensitive data while users are in private browser mode."

25 Do you have the Complaint next to you? I see 11:35:47

1 you looking over at something.

2 A. Yes, I do.

3 Q. Do you have any other --

4 MR. LEE: The Second Amended?

5 MR. SCHAPIRO: Yeah. 11:35:53

6 Q. Do you have any other documents in front of you  
7 in the room?

8 A. I do. I have the Second Amended Complaint, I  
9 have the Google splash screen or new tab screenshot, I  
10 have the Google Terms of Service, and I have the Google 11:36:13  
11 Privacy Policy. Those are the four materials I have in  
12 front of me.

13 Q. Are there any notations on any of those  
14 documents?

15 A. Yes, I've made my own notations on these 11:36:28  
16 documents.

17 MR. SCHAPIRO: All right. James, I would ask  
18 that those be produced, if you can produce them at a  
19 break. Or after the -- after the deposition is fine.

20 MR. LEE: Sure. 11:36:40

21 Q. BY MR. SCHAPIRO: Okay. So, Mr. Davis,  
22 paragraph 1 talks about interception and collection of  
23 personal and sensitive user data while users are in a  
24 private browsing mode.

25 Do you see that? 11:36:57

1 A. Yes, I see that.

2 Q. What information do you consider to be --  
3 actually, strike that.

4 Do you understand that to be two different  
5 categories, or is personal and sensitive one -- a single 11:37:16  
6 description?

7 A. I don't suppose I've ever considered the  
8 distinction on the language. But personal instance of  
9 user data, I would think of that as a logical construct  
10 that would be -- any of the information that I'm 11:37:39  
11 communicating -- or using inside that -- inside that  
12 private browser session in private browsing mode or  
13 incognito mode.

14 Q. So you're saying that anything you do in a  
15 private browsing mode is necessarily personal and 11:38:03  
16 sensitive --

17 A. I'm saying that it is --

18 Q. -- to you?

19 A. Yeah, of a personal and sensitive nature  
20 generally because it is private. It is being demarked 11:38:21  
21 as -- I'm making an assertion as a user, that I wish for  
22 that session to be private.

23 Q. So what are some categories, in your mind, of --  
24 of personal information? Or maybe, I guess -- the reason  
25 I hesitated was based on your -- on your -- your last 11:39:10

1 answer, maybe you're saying that anything you type into a  
2 browser is personal information. Is that correct?

3 A. That's correct. I consider my thoughts to be my  
4 property of self. And I think if people think deeply  
5 about privacy, they'll come to the same conclusion, that 11:39:35  
6 if one is asserting privacy of thoughts, then the  
7 interaction with a mode of communication that is deemed  
8 privacy, as it's stated in the Google Privacy Policy --  
9 you can choose to browse the web privately using Chrome  
10 incognito mode. 11:40:02

11 So when I assert the use of incognito mode, I'm  
12 asserting my desire for privacy. Because as Google  
13 states in the Google Privacy Policy, I can choose to  
14 browse the web privately using Chrome in incognito mode.

15 Q. And I think you said very early in the 11:40:29  
16 deposition when I was asking you about, at least, the  
17 ordinary definition of incognito, you used terms like  
18 "concealed" and "unidentifiable." Do you recall that?

19 A. I recall that.

20 Q. So it's your position that your privacy is being 11:40:54  
21 violated if the -- your activity is not concealed or not  
22 unidentifiable; is that fair?

23 MR. LEE: Objection to form.

24 Andy, could you -- could you just ask it again?

25 I think I may have misunderstood your question. 11:41:26

1 "anonymized fashion," I believe it's a reasonable  
2 perspective to assume that if that is actually being  
3 collected when I was told that they were not, that erodes  
4 my trust in whether or not Google may be leveraging that  
5 anonymized persona in a way that perhaps they shouldn't. 11:49:00

6 And so it's a trust erosion perspective to know  
7 that tracking activities that I was told I was in control  
8 of and that I didn't consent to occurred while I was in  
9 incognito mode.

10 Q. Do you have any basis to believe that any such 11:49:30  
11 profile has ever been made based on -- based on your  
12 incognito browsing activity?

13 A. I believe Google has disclosed the fact that for  
14 any logged-in user that's an identity that they know. I  
15 also am aware through the disclosures through this case, 11:49:59  
16 and/or -- and I may not use that -- that may not be the  
17 correct word, but the materials presented in the case,  
18 that these anonymized profiles exist.

19 And so I would contend that if information is  
20 being collected during incognito sessions, I doubt 11:50:21  
21 seriously that Google would do that if there was no value  
22 in that; right?

23 And so if the effort is being made to collect  
24 that information when I thought it was not being  
25 collected, this -- this challenges the notion of the 11:50:43

1 behavior, if that's the question, I think that would be a  
2 step in the right direction. But I don't think that that  
3 would preclude any of the damages or violation of privacy  
4 that may have occurred if that stuff was being stored and  
5 not deleted. I think that's the fairest way I could 11:53:43  
6 answer that question.

7 Q. BY MR. SCHAPIRO: You mentioned in your answer a  
8 moment ago logging in. What were you referring to there?

9 A. Oh, sure. Logging in. That is to provide a  
10 username and password in, for example, Gmail account. I 11:54:05  
11 have a Gmail account. If I want to check Gmail, I would  
12 have to authenticate to access that service.

13 Q. And do you understand that if you log in to your  
14 Gmail account, is it still your expectation that Google  
15 will receive no information about you? Or does that -- 11:54:25

16 A. No, I -- no. In the case in which I'm  
17 identifying myself to Google, I -- I understand that they  
18 are aware of what my activities are. When I have  
19 identified myself to them.

20 Q. Do you still have the Complaint handy? 11:55:00

21 A. I have it here, yes.

22 Q. So can I ask you to look at paragraph 163 of the  
23 Second Amended Complaint? And, you know, just for the  
24 record, even though it's a document on the docket, why  
25 don't we go ahead and introduce it. 11:55:20

1           Feel free to refer to the version that you have  
2           there, the hard copy, if that's easier. But let's  
3           introduce as the next exhibit the Second Amended  
4           Complaint, just to have a complete record.

5           So this will be Exhibit 6, I think. 11:55:35

6           A. Sir, what was that paragraph number again?

7           Q. Paragraph 163.

8           A. 163. Okay.

9           (Exhibit 6, Second Amended Complaint, marked for  
10          identification electronically by counsel.) 11:56:03

11          THE WITNESS: I see it at the bottom of a page,  
12          and it starts with: "It is common knowledge that Google  
13          collects." Is that the paragraph in question?

14          Q. BY MR. SCHAPIRO: It is.

15          A. All right. 11:56:15

16          Q. So, actually, why don't you go ahead, if you  
17          don't mind, just read that first sentence out loud.

18          A. Sure. What I see here is, paragraph 163, "It is  
19          common knowledge that Google collects information about  
20          web-browsing activity of users who are not in private 11:56:31  
21          browsing mode. It is also common knowledge" --

22          Q. You can stop. I just want to ask you first  
23          about that first sentence.

24          A. Okay.

25          Q. Feel free to read the whole thing, so you -- if 11:56:45

1 you want to, to yourself, but...

2 So -- so this is referring to users who are not  
3 in private browsing mode; correct?

4 A. Correct. I see the emphasis on not in private  
5 browsing mode. 11:57:06

6 Q. Yes. And is that -- so your Complaint here says  
7 that this is common knowledge. Is that knowledge that --  
8 that you, Jeremy Davis, had also prior to this lawsuit?

9 A. Yes, that's my understanding.

10 Q. And do you agree, as someone who works in the 11:57:24  
11 space that you work in, that it is -- it's common  
12 knowledge that Google collects information about web  
13 browsing activity when people are not in private mode?

14 A. Yeah, I would say that's a fair statement.

15 Q. And is that impacted one way or the other by 11:57:57  
16 whether the user has Google's -- had Chrome's sync  
17 feature enabled? S-Y-N-C.

18 A. I'm not 100 percent sure if that is solely  
19 required.

20 Q. No, I guess I'm just asking you -- well, let me 11:58:17  
21 back up.

22 Are you aware that -- that Chrome has various  
23 modes? For example, incognito is one mode; right?

24 A. (Nods head.)

25 Q. You have to answer verbally so the court 11:58:30



1 reporter can get it.

2 A. Yes, I understand incognito to be a mode of  
3 operation for Chrome.

4 Q. And you understand that there's something that  
5 is sometimes called basic mode, which is just regular old 11:58:42  
6 Chrome right out of the box?

7 A. Yeah, it's the standard wide screen. I would  
8 call that normal Chrome. That's how I refer to it. So a  
9 normal Chrome session and an incognito session, yes.

10 Q. And do you understand that users can sometimes 11:58:58  
11 choose to enable a feature called sync, S-Y-N-C, as well,  
12 if they have multiple devices?

13 A. I believe I'm familiar with this in the profile  
14 settings of Google. Like once you're logged in, I think  
15 that's an option that is presented to you. 11:59:15

16 Q. And do you have any belief that just using plain  
17 old Chrome right out of the box, without Sync enabled,  
18 gives you privacy protection so that Google won't see  
19 what you're doing?

20 MR. LEE: Objection to form, calls for 11:59:38  
21 speculation, lack of foundation.

22 THE WITNESS: I would assume that -- I can give  
23 you my personal perspective. I don't assume privacy in,  
24 quote/unquote, "normal Chrome sessions." Why else would  
25 the incognito mode exist and why else would the Privacy 12:00:01

1 Policy refer to it as the prescribed way to browse  
2 privately?

3 So my assert- -- my impact of understanding  
4 privacy assumptions are fundamentally different between  
5 the two. 12:00:19

6 Q. BY MR. SCHAPIRO: All right. So here in this  
7 same sentence, a paragraph of your Complaint, it also  
8 says, "It is also common knowledge that Google causes  
9 targeted advertisements to be sent based on that  
10 information." 12:01:01

11 Do you see that?

12 A. Yes, I've read that sentence.

13 Q. And do you generally understand that on what for  
14 you, I guess, are the rare occasions when you are not  
15 incognito, if you see ads tailored to your interests it's 12:01:17  
16 because Google or some other entity has received  
17 information about your past browsing?

18 A. Yes, I understand that.

19 Q. When you've used Chrome, have you ever seen ads  
20 that appear to be tailored to you? 12:01:37

21 A. In normal mode, yes.

22 Q. And I assume the flip side, but not in incognito  
23 mode?

24 A. I have actually experienced rarely a term that I  
25 have searched for or a topic, I've seen those things show 12:01:59

1 up even in incognito mode. It is rare. It is rate, not  
2 the rule, but I have seen that occur in incognito mode.

3 Q. Has that been when you're within a single  
4 incognito session, that is you might have multiple tabs  
5 open but you've been using incognito during the -- you 12:02:24  
6 know, without closing out of it?

7 A. It's possible. I'm not sure of the conditions  
8 specifically, but I suppose that's possible.

9 Q. Do you have any belief as to whether a targeted  
10 advertising can be beneficial to users such as yourself? 12:02:52

11 MR. LEE: Objection to form, vague as to scope.

12 THE WITNESS: I would say that I understand that  
13 there's a whole industry and business around targeted  
14 advertising. And I suppose there could be some utility.  
15 I think it varies by person. But, yeah, I would say 12:03:15  
16 there's probably utility in those ads.

17 Q. BY MR. SCHAPIRO: Is Chrome the browser -- the  
18 primary browser that you use to surf the internet?

19 A. Yes, it is the primary.

20 Q. What other browsers, if any, do you use? And 12:03:56  
21 maybe just to narrow it a little bit, I guess I would  
22 say -- why don't we start with currently.

23 A. Yeah, the big three that I generally find  
24 installed on any of my devices would be the native OS  
25 browser, so like if I'm on a Windows device there would 12:04:23

1 Q. When you have an incognito session open, about  
2 how long do you usually keep it open?

3 Let me make that more clear. Do you ever keep  
4 tabs or windows open for -- for more than a day?

5 A. Yeah, there's occasions where I do. As a 12:29:03  
6 general practice, I generally will close out of the  
7 browser session. But there have been occasions where I'm  
8 in the middle of researching something or in the middle  
9 of working on something and I'll leave it open, suspend  
10 the computer, and come back to it the next day. 12:29:22

11 Q. How about leaving tabs or windows open for more  
12 than a week? Is that something that you commonly do?

13 A. There are occasions in which I have, yes.

14 Q. Is that common or -- or rare?

15 A. It's -- I would say it's -- it's on the rarer 12:29:47  
16 side, yeah. Because most of the times I'm getting in,  
17 getting out, doing what I need to do. But it does --  
18 there are occasions in which I'll -- yeah, I'll leave  
19 them long running.

20 Q. So I think earlier in the deposition today you 12:30:09  
21 were telling us about your understanding of the -- the  
22 incognito splash screen. Do you recall that?

23 A. Yes.

24 Q. And prior to your involvement in this case, was  
25 that splash screen the only document that contributed to 12:30:47

1 your understanding or your belief about what incognito  
2 does, or were there other documents that you had  
3 reviewed?

4 MR. LEE: Objection to form, mischaracterizes  
5 his prior testimony. 12:31:11

6 You can answer.

7 THE WITNESS: Yeah. No, so I had reviewed both  
8 the Google Terms of Service, the Google Privacy Policy,  
9 as well as material, maybe blog posts, on incognito. So  
10 I was not solely informed by the splash screen. 12:31:27

11 Q. BY MR. SCHAPIRO: And this is -- so this prior  
12 to involvement in the lawsuit, you had looked at, you  
13 say, the Privacy Policy and maybe some blog posts?

14 A. That's correct.

15 Q. By the way, you said that when you saw the story 12:31:55  
16 or advertisement about this lawsuit, it peaked your  
17 interest. Had you, prior to that point, ever seen any  
18 articles or blog posts suggesting that incognito -- not  
19 by Google, suggesting that incognito mode might not be  
20 private in the way that you expected? 12:32:23

21 MR. LEE: Hold on.

22 I just want to object to the extent that you are  
23 mischaracterizing Mr. Davis' testimony. He did not -- he  
24 did not testify that he responded to an advertisement.

25 MR. SCHAPIRO: I withdraw the point about the 12:32:37

1 and the Google Privacy Policy.

2 I'm not a lawyer. I'm sure there may be other  
3 documents that the Court considers constitution to that  
4 contract, but that's my understanding in this case.

5 Q. Recognizing that you're not a lawyer, but do you 12:36:40  
6 have any thoughts, as the person who entered into the  
7 contract, of what other documents might be part of it? I  
8 think you just listed the splash screen, the Google Terms  
9 of Service and the Google Privacy Policy.

10 You said maybe there are some others. Any 12:37:00  
11 thoughts on what those might be?

12 A. Oh, yeah, the other one I think that's of  
13 interest may be in the health file related to Google  
14 Analytics. I believe it made specific mention of the  
15 Google Privacy Policy. That would be one additional I 12:37:17  
16 would add to that list.

17 And it said that Google Analytics would adhere  
18 to the Privacy Policy, which clearly states that I am put  
19 in control of what information Google collects about me  
20 and that we can use Google services to manage our 12:37:38  
21 privacy. And if I choose to browse privately, I can  
22 browse the web privately using Chrome in incognito mode.

23 And so the way that I would assert that privacy  
24 would be to use incognito mode.

25 Q. And in connection with this contract, did you 12:38:04

1 provide anything to Google in return to the use of  
2 Chrome?

3 A. Of course. I provided my activity and data;  
4 right? Clearly that -- there is value to the data  
5 provided. And that is -- that is the -- that is the 12:38:37  
6 exchange of the parties in that contract; right?

7 Q. So you agreed to provide data to Google?

8 A. In normal -- in normal browsing mode. Nowhere  
9 in the Terms of Service, the Google Privacy Policy or the  
10 splash screen did it provide me an opportunity to consent 12:39:03  
11 to the exchange of data while in incognito mode.

12 Again, Google tells me I can browse privately.  
13 I have no expectation of exchange of data when in  
14 incognito mode.

15 Q. Can you take a look at paragraph 275 of the 12:39:20  
16 Complaint, the Second Amended Complaint?

17 A. Sure. Let me just turn to it. You said 275?

18 Q. Yes, sir.

19 A. It's almost to the end. Let's see. Okay. I  
20 have it in front of me. 12:40:03

21 Q. Do you see where it says, "Plaintiffs and class  
22 members also did not receive the benefit of the bargain  
23 for which they contracted and for which they paid  
24 valuable consideration in the form of the personal  
25 information they agreed to share, which has ascertainable 12:40:20

1 Q. Sure.

2 A. Sure. So we must have checked the dates around  
3 that time, then.

4 Q. Okay. So you can -- I don't have any other  
5 questions about this exhibit. 12:47:50

6 But let's take a look at Exhibit 7, which is the  
7 Google Terms of Service that were effective through  
8 November 4th, 2005.

9 A. Okay. I have that document up.

10 Q. And I'll ask you if you remember which portions 12:48:12  
11 you reviewed. Did you review only certain portions or  
12 all of it?

13 A. I'm just checking to see how familiar this is.  
14 This is from 2001 to 2003; is that right?

15 Q. My understanding is this is 2003 to 2005. 12:48:46

16 A. I only ask that question because it's  
17 copyrighted 2001/2003.

18 Q. I think that's just when the copyright was. I  
19 don't know.

20 MR. LEE: Yeah, Mr. Schapiro, I think you need 12:49:05  
21 to make a representation of the date. You either know --  
22 you can make that representation or you don't. I don't  
23 think we can say --

24 MR. SCHAPIRO: Yeah, my understanding, but I  
25 want to be careful, because the witness has just pointed 12:49:15



1 out this copyright point. But I -- my understanding is  
2 that this is the Terms of Service that were in effect  
3 through November -- from March 29th, 2003, to  
4 November 4th, 2005.

5 MR. LEE: And are you making that representation 12:49:40  
6 to this witness today?

7 MR. SCHAPIRO: I'm making that representation to  
8 this witness today. And if I'm wrong, we can, of course,  
9 clear it up later, but...

10 MR. LEE: Okay. 12:49:50

11 THE WITNESS: So if you don't mind, I'd like to  
12 read through this just to see if it's familiar to me.  
13 There's a lot of information here, and it's quite old.

14 Q. BY MR. SCHAPIRO: Of course. You're entitled.

15 A. Okay. Thanks for give me the opportunity to 12:50:54  
16 review.

17 Q. All right. Do you recall if you agreed to the  
18 Google Terms of Service when you opened your account?

19 A. I would have absolutely had to. I think it was  
20 a prerequisite to get the account, is my recollection. 12:51:08

21 Q. And in these Terms of Service, did Google  
22 represent to you that you could control what information  
23 Google collects by enabling private browsing mode?

24 A. I don't think that was temporarily possible,  
25 because I don't think incognito existed at this time, 12:51:30

1 when -- when Gmail was first launched.

2 Q. So I'll ask you to take a look at the Second  
3 Amended Complaint again, paragraph 31, please.

4 A. Paragraph 31?

5 Q. Yes, sir. 12:51:56

6 A. Okay. I'm there.

7 Q. And do you see there's a citation to the Google  
8 Privacy Policy? And this is in the -- to the May -- the  
9 May 28th -- I guess in the Complaint it just says,  
10 "May 2018 modification to the Privacy Policy." 12:52:32

11 Do you see that?

12 A. Yes, I see that line.

13 Q. And do you know whether you reviewed that  
14 version of the -- ever reviewed that version of the  
15 Privacy Policy? 12:52:45

16 A. I did.

17 Q. And do you recall whether that was before or  
18 after your involvement in this litigation?

19 A. Yes, I believe I rereviewed it when the  
20 incognito feature was launched. And this seems to be 12:52:58  
21 aligned with that timeline.

22 Q. And did you agree to the Google Privacy Policy?

23 MR. LEE: Objection to form.

24 THE WITNESS: I don't know -- I don't know that  
25 there's -- like, you agree to Terms of Service; right? 12:53:17

1 But I don't believe there's a -- I just don't understand  
2 the question. Did I agree to it?

3 Q. BY MR. SCHAPIRO: Did you ever indicate --

4 A. Did I agree with the terms? Or did I -- did I  
5 agree with what they were communicating? Or are you 12:53:33  
6 asking if I told Google that I agreed to the Privacy  
7 Policy? I'm just unclear on your question.

8 Q. Did you ever indicate to Google in any way that  
9 you did not agree to its Privacy Policy?

10 MR. LEE: Objection to form. 12:53:51

11 THE WITNESS: No. No. To my recollection, I  
12 never told Google that I disagreed with its statements in  
13 its updated Privacy Policy.

14 Q. BY MR. SCHAPIRO: Let's take a look at the --  
15 what I will represent to you is the updated Privacy 12:54:08  
16 Policy referred to in your Complaint, effective from  
17 May 28th, 2018, to January 21st, 2019.

18 (Exhibit 9, Google Privacy Policy, marked for  
19 identification electronically by counsel.)

20 Q. BY MR. SCHAPIRO: And can you tell me what 12:54:36  
21 sections in here, if any, you believe promised you that  
22 browsing in private mode would prevent Google from  
23 receiving your information?

24 A. One second. This is the evidence 12 -- or  
25 the -- 12:55:08

1 Q. Yes. Exhibit 12, yeah.

2 A. -- Exhibit 12?

3 MR. LEE: You have a paper copy, too.

4 Q. BY MR. SCHAPIRO: Yeah, if you have a paper

5 copy, you can look at it as well. 12:55:18

6 A. Yeah. The paper copy I have has section numbers

7 on it. And this one --

8 MR. LEE: No.

9 THE WITNESS: Oh, sorry. No, it's the Privacy

10 Policy. Excuse me. 12:55:30

11 Yeah, just one second.

12 Yeah, I can call out the specific language in

13 the Privacy Policy.

14 So at the end of the first sentence, there are

15 the words "Put you in control"; right? So I understand, 12:55:47

16 through Google's Privacy Policy, that I am in control;

17 right?

18 Q. BY MR. SCHAPIRO: Do you believe that --

19 MR. LEE: Wait. Were you done with your answer?

20 Excuse me. Excuse me. I'm not sure he was 12:56:06

21 done. I just want to confirm.

22 THE WITNESS: No, I wasn't. I wasn't.

23 MR. LEE: Why don't you finish.

24 THE WITNESS: If you scroll further down, below

25 the three bullet points on the first page, there's a 12:56:17

1 paragraph that begins with, "You can use our services in  
2 a variety of ways."

3 Do you see that?

4 Q. BY MR. SCHAPIRO: Yeah.

5 A. That first sentence, "You can use our services 12:56:30  
6 in a variety of ways to manage your privacy."

7 Again, the assertion of privacy and the Privacy  
8 Policy from Google to its users.

9 The last two sentences of that paragraph, I'd  
10 like to read. "You can also choose to browse the web 12:56:51  
11 privately using Chrome in incognito mode." You've heard  
12 me say that numerous times today.

13 Next sentence, "And across our services, you can  
14 adjust your privacy settings to control what we collect  
15 and how your information is used." 12:57:10

16 Again, this implies to me that Google is stating  
17 that I have control; right? And that any data that I  
18 provide to Google, I can -- I would explicitly consent to  
19 their collection of that data.

20 They have stated that I can browse privately 12:57:32  
21 using Chrome in incognito mode. I've -- I've testified  
22 earlier that when I am browsing privately, I never  
23 consent to collection.

24 So, again, in the Privacy Policy, I'm taking  
25 Google at their words that when I am browsing privately, 12:57:51

1 that is the method by which I notify Google that I do not  
2 consent to collection.

3 Q. Are you finished?

4 A. Yes, I'm finished. Thank you.

5 Q. So you have emphasized the use of this word 12:58:24  
6 "control"; correct?

7 A. Correct.

8 Q. And so what have you done -- strike that.

9 And it says that -- the Privacy Policy says that  
10 you can control -- or that you can -- that they can -- 12:59:00  
11 that Google puts you in control. Is that a fair  
12 paraphrase of that first sentence that you've cited?

13 A. That's -- yes.

14 Q. So what -- so being in control, what did you do  
15 to prevent Google from receiving, let's say, your IP 12:59:27  
16 address when you visited a site that ran Google  
17 Analytics? How did you exercise that control?

18 A. So the control that I exercised is I used the  
19 feature incognito mode in Chrome that they expressly  
20 called out in this Privacy Policy as a means for me to 12:59:49  
21 privately browse the web.

22 So, again, my control in this situation, the  
23 recourse that Google has indicated to me in their own  
24 Privacy Policy, that if I want to browse privately and  
25 not be observed by Google, is to use Chrome in incognito 13:00:12

1 mode.

2 Q. And so does --

3 A. That's exactly what I did.

4 Q. Sorry. Did I cut you off?

5 A. No, that's okay. I was saying and that's 13:00:26  
6 exactly what I did.

7 Q. So is it your understanding that browsing the  
8 web -- that the word -- the phrase "browse the web  
9 privately" means that even if a user visits a site that  
10 uses Google Analytics, that even the IP address 13:00:57  
11 associated with that visit would not be shared with  
12 Google?

13 A. Yes, that's correct.

14 Q. How would --

15 A. And I -- 13:01:17

16 MR. LEE: I think he's still finishing his  
17 answer, Andy.

18 THE WITNESS: Yeah, I was just going to say the  
19 reason why I believe that is that if you look at the help  
20 file associated with Google Analytics, it actually 13:01:30  
21 specifically refers back to its adherence to the Google  
22 Privacy Policy, in which the Google Privacy Policy states  
23 that I can browse the web privately using Chrome in  
24 incognito mode.

25 So I think it's a fair point of view to come 13:01:54

1 information.

2 Q. And other than what you pointed to on the first  
3 page, where it says you can also choose to browse the web  
4 privately, is there anywhere here in this list of  
5 information that is collected by Google anywhere in here 13:10:13  
6 that it tells you that incognito mode would prevent  
7 Google from receiving the data?

8 MR. LEE: Objection to form, mischaracterizes  
9 prior testimony. Mr. Davis didn't point to just one  
10 sentence in the Privacy Policy in his prior answer. He 13:10:30  
11 pointed out multiple.

12 MR. SCHAPIRO: Let me rephrase.

13 Q. Other than the language that you pointed to on  
14 the first page in our -- when we were discussing this  
15 document earlier, do you see anything in this description 13:10:46  
16 of data that is collected by Google that says that  
17 private browsing prevents Google from receiving the data?

18 A. I don't see anything about incognito mode here.  
19 However, I would say I don't have to, because the  
20 assertion is that I am in control and that this 13:11:10  
21 information, which I've already testified earlier, is  
22 private information. If the mechanism that Google  
23 provides to me is private browsing in incognito mode, as  
24 we just read on the first page, then why would I make an  
25 assumption that it's okay to collect this information in 13:11:32



1 incognito mode? I can't make that connection, if that's  
2 what you're asking me.

3 MR. SCHAPIRO: So we've been going about an  
4 hour. Would this be a decent time to take a lunch break?

5 MR. LEE: Yeah. You read my mind. Thank you, 13:11:50  
6 Mr. Schapiro.

7 MR. SCHAPIRO: While we're still on the record,  
8 James, could you, during the lunch break, send us a scan  
9 of the marked up documents that Mr. --

10 MR. LEE: Sure. I can try. It's not my office, 13:12:03  
11 but -- I've got to see who's around. But, just for the  
12 record, there are no notations on the documents.

13 Mr. Davis just highlighted some language on the privacy  
14 page, which he's already called out. If you want me to  
15 email that to you or scan that to you, I can, but there's 13:12:20  
16 no --

17 MR. SCHAPIRO: Yes.

18 MR. LEE: -- notes or anything.

19 I don't want you to have the wrong idea.

20 MR. SCHAPIRO: I see. That's fine. Just -- I 13:12:28  
21 don't need the whole documents then. Just -- if you just  
22 send me whatever the highlighted parts are, that would be  
23 great.

24 MR. LEE: Sure. Okay. We'll do that.

25 MR. SCHAPIRO: All right. I'm happy to go off 13:12:38

1 through its services that are installed on third-party  
2 websites?

3 A. Yes, I do, actually. If you take a look at the  
4 very first page.

5 Q. Uh-huh. Page 1 or -- 14:13:17

6 A. Yes, sir. Page 1.

7 Q. Uh-huh.

8 A. Paragraph 1, just underneath the archive date,  
9 June 21, 2016.

10 Q. Uh-huh. 14:13:30

11 A. The last sentence says, "Although this policy  
12 describes features that are specific to Chrome, any  
13 personal information that is provided to Google or stored  
14 in your Google Account will be used and protected in  
15 accordance with Google Privacy Policies." 14:13:48

16 I'll refer back to the Google Privacy Policy  
17 that's referenced there where it's stated that I'm in  
18 control of the data that is collected, that I can browse  
19 the web privately with Chrome in incognito mode, and I  
20 can adjust privacy settings to control what is collected 14:14:12  
21 and how your information is used.

22 If I never consented to have data collected in  
23 private mode, to me this is a direct violation of  
24 Google's Privacy Policy, including this one that's been  
25 presented. 14:14:32

1 incognito would -- I think I heard you say the word  
2 "disable" or "break" the ad tech technology on Any Town's  
3 site.

4 Q. BY MR. SCHAPIRO: Correct.

5 A. No, I don't have an expectation that Google 14:24:39  
6 breaks ad tech and ad serving.

7 Q. Do you have an expectation that incognito  
8 disables or breaks ad serving by Google -- by Google Ad  
9 Manager?

10 A. Yes, I have a reasonable expectation of that, 14:25:04  
11 because as we stated earlier, in the Google Analytics  
12 help file, it states, on Google's own product, that it  
13 will adhere to the Google Privacy Policy, and in the  
14 Google Privacy Policy, it states that I can browse the  
15 web privately using Chrome in incognito mode. 14:25:26

16 So, yes, in the case of Google's own product and  
17 the reference to their own Privacy Policy, which it  
18 states it adheres to, Google asserts that I am in  
19 control, that I can browse privately, and it will not  
20 collect the information that I consider private. 14:25:47

21 Q. Have you ever seen ads on the internet when you  
22 are browsing in incognito mode?

23 MR. LEE: Objection. Asked and answered.

24 MR. SCHAPIRO: I don't think he answered about  
25 in incognito mode, but anyway. 14:26:05

1 not make this additional carveout.

2 So to me this at best represents an  
3 inconsistency of statement of fact from Google. So I'm  
4 even more -- to be honest with you, I'm very confused by  
5 this inconsistency, because if it was important for us to 14:41:14  
6 know that, why was this not disclosed previously?

7 Q. BY MR. SCHAPIRO: And so you're saying you think  
8 this would have been important to disclose?

9 A. Yes, I do.

10 Q. Let's take a look at Exhibit 12, please. 14:41:39

11 (Exhibit 12, Search & browse privately -  
12 Computer - Google Search Help, marked for  
13 identification electronically by counsel.)

14 THE WITNESS: Okay. I have that document.

15 MR. LEE: It's a short document. Do you want to 14:42:27  
16 just read it?

17 THE WITNESS: Yeah. Give me just one moment.

18 MR. LEE: By the way, while we're waiting, Andy,  
19 before this deposition closes, can you give me the  
20 effective date of the last document we looked at, 14:42:57  
21 Exhibit 11, please?

22 MR. SCHAPIRO: I will see if I can.

23 THE WITNESS: Okay. I've reviewed the document.

24 Q. BY MR. SCHAPIRO: And do you know if you've seen  
25 this document before? 14:43:40

1 A. Yes, I've seen this document before.

2 Q. In what context?

3 A. It was after the case started. I believe I  
4 reviewed the search and browse privately help section,  
5 and what's catching my eye is their core -- what stands 14:44:01  
6 out in memory for this is that I remember them comparing  
7 themselves to other private browsing modes with other  
8 browsers.

9 Q. In that second sentence there it describes  
10 several ways you can browse the web privately; right? It 14:44:30  
11 says, "To browse the web privately, you can," and then it  
12 lists several things.

13 A. Sorry, can you restate that?

14 Q. Sure.

15 The second sentence says, "To browse the web 14:44:44  
16 privately, you can see use private browsing, sign out of  
17 your account, change your custom results settings, or  
18 delete past activity."

19 And my question was: This sentence says that to  
20 browse the web privately, there are several -- there are 14:45:05  
21 a number of things you can do; correct?

22 A. Yes. I see that verbiage.

23 Q. And then all of these are things you can do to  
24 browse the web privately; correct?

25 A. They may -- they may destroy the information 14:45:23

1       that is in the browser, but if that data was collected  
2       upstream by Google or another entity, then that browsing  
3       session was not private.

4           Q.   And yet this disclosure describes all those  
5       things as ways you can browse the web privately, doesn't       14:45:46  
6       it?

7           A.   It puts that forward, that's right, and I would  
8       agree with private browsing, if it's doing what it's  
9       supposed to do, signing out of the account, yes.   If you  
10      were signed in, that activity would be identifiable to       14:46:03  
11      you.   Not sure what it means about change your custom  
12      result settings, and deleting past activity, that's just  
13      local.   That wouldn't delete any collected data.

14          Q.   Well, does this change your view as to whether  
15      when Google has used the word -- phrase "browse the web       14:46:19  
16      privately," it meant something beyond just deleting  
17      local -- or protecting against local retention of data?

18          A.   No.   I mean, the Google Privacy Policy's still  
19      in effect, regardless of what is said on the details of  
20      search and browse privately in this document.   Again, in       14:46:47  
21      Google's Privacy Policy, they say I have the control over  
22      my private data, I'm able to browse the web privately in  
23      incognito mode, and that I'm in control of what  
24      information's collected; right?

25               And if I'm browsing privately and Google in       14:47:13

1 incognito is collecting that information, which it is,  
2 then I'm not browsing privately, despite any claims of  
3 how to search privately on this document.

4 Q. So is your contention that the phrase "browse  
5 the web privately" means one thing in the Privacy Policy 14:47:34  
6 and means something else in this other document that you  
7 reviewed?

8 A. I could interpret that as true here, because  
9 here they're couching do these things to browse  
10 privately, whereas in the Google Privacy Policy, it 14:47:50  
11 simply states I can browse privately using Chrome in the  
12 incognito with no clarification. Moreover, it's --  
13 moreover, the Privacy Policy states that I would be in  
14 control of what is collected, and, in fact, I'm not when  
15 I'm in incognito mode, because Google is collecting it. 14:48:11

16 And if you refer back to our previous  
17 conversation about the data that has been collected but  
18 is anonymized, the fact that that all was collected and  
19 can be associated even once anonymized is a violation of  
20 Privacy Policy. 14:48:31

21 Q. Do you believe that everyone would understand  
22 the phrase "browse the web privately" the way you  
23 interpret browse the web privately?

24 A. Yes. I believe that people would not parse is  
25 it just cookies, is it just my browsing history. When 14:48:49

1 people understand private, I would say the vast majority  
2 of layman and reasonable people would say, "I am private.  
3 I am free from the collection and observation of this  
4 data," anonymized or otherwise.

5 Yes. My answer's yes. I believe browsing 14:49:09  
6 privately would mean I'm not being observed, and my data  
7 is not being collected.

8 Q. And you said whether anonymized or not, and I  
9 thought earlier you -- you -- when you were talking about  
10 incognito, you were placing an emphasis on what you 14:49:26  
11 thought was a lack of anonymity?

12 MR. LEE: Objection to form, mischaracterizes.

13 You can answer.

14 THE WITNESS: I'll state again I think a  
15 reasonable person has no concept of anonymization -- you 14:49:37  
16 know, anonymized data, because they don't even perceive  
17 that the data's being collected, because they perceive  
18 that they are being -- that they are able to browse  
19 privately in these private browsing modes as they're  
20 branded and as the policy states they can control the 14:49:55  
21 data when in that mode.

22 Q. BY MR. SCHAPIRO: And you see here in the next  
23 paragraph under, "How private browsing works," this  
24 document indicates, as I think you pointed out, that  
25 private browsing works differently depending on which 14:50:16



1 Q. All right.

2 A. But I can attest I don't actively use this when  
3 I'm using Google services, to my knowledge.

4 Q. Got it. Okay. Let's take a look at another  
5 interrogatory. 15:42:02

6 (Exhibit 17, Plaintiff Jeremy Davis' Amended  
7 Objections and Responses to Defendant's Second  
8 Set of Interrogatories, marked for  
9 identification electronically by counsel.)

10 Q. BY MR. SCHAPIRO: While it's loading -- I mean, 15:42:05  
11 interrogatory answer.

12 While it's loading, do you know what a get  
13 request is, G-E-T?

14 A. Sure. In the context of technology, the way the  
15 HTTP protocol works, there's four primary actions, get, 15:42:25  
16 put, post and delete, and it's a header -- or an  
17 operation header in the packets that are exchanged  
18 between the browser and the web application. Gets  
19 generally are pulls, so you're requesting information of  
20 the server when a get request is made. That's my 15:42:50  
21 understanding of it.

22 Q. All right. So let's take a look at your answer  
23 to Interrogatory Number 8.

24 A. I'm sorry, which exhibit are we looking at?

25 Q. This would be Exhibit 16 -- no. Sorry. It 15:43:08

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1 should be 17.

2 A. Seventeen.

3 Q. I'm not seeing 17. Maybe I need to refresh.

4 MR. LEE: Yeah, it just came up for us, so it

5 should come on your side, too, Andy. 15:43:25

6 MR. SCHAPIRO: Okay. Got it.

7 THE WITNESS: Okay. I have that document up.

8 Q. BY MR. SCHAPIRO: All right. And you'll see  
9 that Interrogatory Number 8 asks you to, "Describe with  
10 particularity each category of 'personal and sensitive 15:43:36  
11 user data' that you contend Google unlawfully  
12 'intercepted.'"

13 Do you see that?

14 A. I do. I see response and -- yeah, Interrogatory  
15 8, I see that. 15:43:53

16 Q. So there are some objections, and then after the  
17 phrase "notwithstanding and subject to these objections,"  
18 there's an answer listing what you describe as some  
19 categories of personal and sensitive user data.

20 Do you see that? 15:44:21

21 A. I do.

22 Q. So I asked you a moment ago about what a get  
23 request is, and you described it to us; correct?

24 A. That's correct.

25 Q. And that is something that you contend is 15:44:31

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1 personal and sensitive user data?

2 A. Yeah, because it's the activity happening during  
3 the private browsing session; right? It's all the  
4 requests that you make while browsing or clicking on  
5 links in your -- in your web browser session. Those 15:44:47  
6 would be the -- the normal get requests that the  
7 browser's processing.

8 Q. And the IP address we've already discussed on a  
9 number of occasions; right?

10 A. Yes. 15:45:03

11 Q. Number 3 says, "information identifying the  
12 browser software that the user is using, including any  
13 'fingerprint' data (such as a user's" -- I guess a "user  
14 interactions with Google's special, unique fonts and  
15 pixels) that allow Google to further track and identify a 15:45:23  
16 particular user, while in private browsing mode."

17 What did you mean by that in this answer?

18 A. I meant exactly what was stated, in that it's  
19 identifying information that the browser can use to  
20 identify my browsing session while in private browsing 15:45:46  
21 mode.

22 MR. LEE: Excuse me. You've been great about it  
23 thus far, Mr. Davis, but to the extent further  
24 questioning about this response requires you to reveal  
25 any attorney communications, I would caution you not to 15:46:04

1 do that. Okay?

2 THE WITNESS: All right.

3 MR. LEE: Go ahead.

4 Q. BY MR. SCHAPIRO: What is fingerprint data?

5 A. Yeah. I would consider fingerprint data to be 15:46:22  
6 any unique identifier that the browser could pass that  
7 would identify a particular device or particular browser  
8 serialization or session associated with any activity  
9 that I'm doing during incognito mode.

10 Q. Did you say "serialization"? 15:47:09

11 A. Yeah. It's basically like a unique identifier,  
12 if any unique identifier is provided for that browser or  
13 device. It could also include things like IP, but I  
14 don't want to blend those two topics; right?

15 Q. Do you recall during this litigation -- you 15:47:47  
16 can -- you don't need to keep this document up if you  
17 don't want to.

18 Do you recall providing Google with cookie  
19 values from your browser during this litigation?

20 A. I know that there was data collected after 15:48:04  
21 browser sessions, and I believe that data was shared as  
22 part of discovery.

23 Q. And do you know how the cookies -- those cookies  
24 were collected?

25 A. I believe there was a forensics process that was 15:48:21

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1 employed to trace custody of that data sample and provide  
2 it.

3 Q. Do you know from what devices that data was  
4 collected?

5 A. I think it's all part of the official record. I 15:48:41  
6 don't recall the device names. I know I had, I believe,  
7 an iPhone and some laptops that were -- and a desktop  
8 that were -- that were imaged and that data provided.

9 Q. And were you browsing in incognito mode when  
10 these cookies were collected? 15:49:08

11 A. Yes.

12 Q. And did you sign in to your Google account when  
13 these cookies were collected?

14 A. The normal browsing activity, as we've talked  
15 about in my testimony, is by default in incognito. I 15:49:25  
16 cannot recall if I was asked to provide samples of both,  
17 so I don't know if I can accurately answer the question.  
18 I don't recall whether it was log in and let's see that  
19 data and then let's only do incognito. I can't recall if  
20 we covered both cases or just incognito. 15:49:45

21 MR. LEE: Right. And Mr. Schapiro's asking  
22 about actions you took, but I just want to -- you're  
23 okay, but just be careful about revealing any  
24 communications or things people said to you.

25 THE WITNESS: Understood. 15:49:57

1 but, no, I know it existed at least -- I think I've been  
2 told at least in 2020, but I don't know exact dates.

3 MR. LEE: Okay. All right. Thanks.

4

5 EXAMINATION 16:15:19

6 BY MR. LEE:

7 Q. Mr. Davis, my name is James Lee, and I represent  
8 the plaintiffs. I know it's been a long day. We'll try  
9 to get you out of here really soon. Okay?

10 A. Okay. 16:15:37

11 Q. I want to -- I want you to -- I want to focus my  
12 first question on the incognito splash screen that you've  
13 discussed several times today. Okay?

14 Now, when you read the incognito splash screen,  
15 does it convey to you that Google will collect your data 16:15:59  
16 while you're in incognito mode?

17 A. No, it doesn't.

18 Q. And why doesn't it convey -- what makes you  
19 believe it does not convey to you that Google will  
20 collect your data while you're in incognito mode? 16:16:18

21 MR. SCHAPIRO: Objection to the form of the  
22 question.

23 THE WITNESS: To respond the -- number one,  
24 Google is never mentioned on the page anywhere; right?  
25 Also, just kind of go through what is on the page, at the 16:16:35

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1 very top we talked about the fact that the very first  
2 thing you see is that unidentifiable persona. This in  
3 part says that, you know, these activities are hard or  
4 impossible to observe.

5 Incognito, we talked about the definition of 16:16:59  
6 that, which is unidentifiable, private. I'm told in the  
7 first sentence that I can browse privately, and so I'm  
8 assuming when we say private, relative to that and  
9 understanding the Privacy Policy, this also implies  
10 privacy from Google. 16:17:22

11 Q. BY MR. LEE: Okay. Thank you.

12 And when you read the splash screen in  
13 conjunction with the Privacy Policy, what does it tell  
14 you about what -- whether Google will collect user data  
15 or information in incognito or private browsing mode? 16:17:39

16 A. Yeah, if I take the totality of the splash  
17 screen, the reference to the privacy and personal  
18 information section that refers to the Google Privacy  
19 Policy and the Google Terms of Service and the Google  
20 Privacy Policy itself. It states that I, the user, am in 16:17:58  
21 control of my data, that I can use Chrome to browse the  
22 web privately in incognito mode and that I am in control  
23 of what Google collects, what information it collects.

24 And we talked a lot about those data that are  
25 considered private, and I would reiterate that when I 16:18:29

1 initiate an incognito mode, I am following the guidance  
2 from the Google Privacy Policy. This states my recourse  
3 for privacy when using Chrome is to use incognito mode,  
4 and that's -- I'm -- had every reason to assume and trust  
5 that my information would not be collected when using 16:18:51  
6 incognito mode.

7 Q. Do you think there's anything -- any ambiguity  
8 about that when you look at the Privacy Policy and the  
9 incognito splash screen together?

10 A. No -- 16:19:05

11 MR. SCHAPIRO: Objection. Calls for a legal  
12 conclusion.

13 THE WITNESS: My answer is no. I don't have any  
14 ambiguity on that fact.

15 Q. BY MR. LEE: Okay. Go ahead. Sorry. 16:19:18

16 A. That's my statement.

17 Q. Okay. Thank you, Mr. Davis.

18 The concept of identity has come up a few times  
19 today, so I want to ask you a few questions about that.

20 Okay? Will that be all right? 16:19:31

21 A. That's fine.

22 Q. Okay. When it comes to your understanding of  
23 this case, is identity just your name or your email  
24 address on your Google account, or is it something else?

25 A. So my response would be that identity is more 16:19:50



JAMES LEE, ESQ.

jlee@bsfllp.com

January 11, 2022

RE: BROWN VS. GOOGLE LLC

JANUARY 7, 2022, JEREMY DAVIS, JOB NO. 5019103

The above-referenced transcript has been completed by Veritext Legal Solutions and review of the transcript is being handled as follows:

\_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext to schedule a time to review the original transcript at a Veritext office.

\_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF Transcript - The witness should review the transcript and make any necessary corrections on the errata pages included below, notating the page and line number of the corrections. The witness should then sign and date the errata and penalty of perjury pages and return the completed pages to all appearing counsel within the period of time determined at the deposition or provided by the Code of Civil Procedure.

\_\_\_ Waiving the CA Code of Civil Procedure per Stipulation of Counsel - Original transcript to be released for signature as determined at the deposition.

\_\_\_ Signature Waived - Reading & Signature was waived at the time of the deposition.

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1     \_X\_Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF

2           Transcript - The witness should review the transcript and  
3           make any necessary corrections on the errata pages included  
4           below, notating the page and line number of the corrections.  
5           The witness should then sign and date the errata and penalty  
6           of perjury pages and return the completed pages to all  
7           appearing counsel within the period of time determined at  
8           the deposition or provided by the Federal Rules.

9     \_\_\_ Federal R&S Not Requested - Reading & Signature was not  
10           requested before the completion of the deposition.

RE: BROWN VS. GOOGLE LLC

JEREMY DAVIS, JOB NO. 5019103

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